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An unending variety of topics

Sunday, December 18, 2016

Weigh and deliver: compensation and the evolution of law and money

Long before the invention of coins, the earliest written legal codes take for granted the existence of commodity money that served both as a medium for paying fines and compensation and as a unit of account and standard of value assessing such penalties. The rules throughout the Sumerian "Code" of Ur-Nammu [1], c. 2100–2050 BC. (about 1400 years before the invention of coinage), show us that standard weights of silver were being used as a unit of account and the actual medium of payment: the code specifically requires defendants adjudged guilty to "weigh and deliver" the specified weight of silver. Over half of the extant rules specify fine or damage payments in silver. The single rule specifying a silver payment that allows an alternative medium to be used calls it out as such: it specifies "he shall bring [a slave woman], if he has no slave woman, he shall instead weigh and deliver 10 shekels of silver; if he has no silver, he shall give him whatever of value he has." (Law 24).

"In Mesopotamia, the adoption of a silver standard that equated measures of barley with a set amount of silver is illustrated by a rare example of a spiral coil of silver, lengths of which were snipped off to pay debts." Given a

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Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

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"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

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standard cross-section, equal lengths of wire gave equal weights of metal. Coils could be audited by snipping them at random points inspecting the cut section. [Link]

A medium for paying fines and damages implies that the recipient (for example the king for a fine, or the victim for compensation) could use that medium in further useful payments – likely for inheritance, tax, religious tithe, tribute, and exchange, among other transactions. (These transactions, and how money emerges from them, will be discussed in future posts). Indeed, the frequency with which a an intermediate good is used as a medium for paying legal penalties may serve as a useful proxy for how much value that good adds (i.e. how much in transaction costs its saves) to other transactions (including but not limited to legal penalties) involved in the circulation of that good.

Penalty	Frequency
Weigh and deliver weight of silver	19
Death	4
Defining state of slavery	2
Return of same or similar (measure and deliver volume of grain for injury involving grain)	2
Variable damages	2
Misc.	2
Unknown or no compensation	6

Frequency of penalties in the "Code" of Ur-Namma [1]

An Indo-European example: the Old Hittite laws

Penalty	Frequency
Weight of silver	71
Number of slaves	10
Enslavement	4
Death	11
Volume of barley	6

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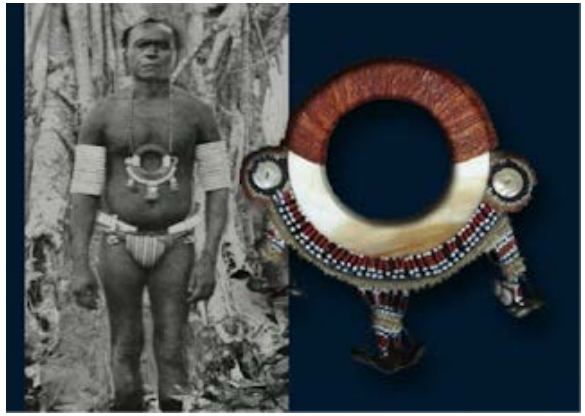
Return objects in same or similar form as item(s) found or stolen	40
Storable food (sheep, bread, and beer)	3
Sheep	7
Land	4
Estate division (land, slaves, livestock)	5
Variable damages	10
Misc.	7
Unknown or no compensation	18

Frequency of penalties in the Old Hittite Laws (c. 1650-1500 BC: still over 800 years before the invention of coinage) [2]

The ubiquity and deep age of compensation culture [3]

Institutions of blood money and compensation via standard forms of wealth for other injuries have been observed and recorded by missionaries, traders, and ethnologists in every branch of humans, including all major divisions of humans that left Africa as well as many who stayed. It is possible that this ubiquitous geographical scope reflects a shared cultural influence that is more recent than our shared ancestry in Africa (c. 70,000 BC) but prior to Columbus and Magellan. More likely, it reflects a common cultural and genetic heritage dating back to at least 70,000 BC before the exit of the ancestors of today's Austronesian and Eurasian peoples from Africa. This is also suggested by the deep age and continuity of the shell bead tradition detailed here. Shell beads were the predominant form of compensation money in cultures that migrated out of the African and Eurasian core before the dawn of livestock agriculture and metallurgy, to such diverse places as Melanesia and the Americas. These patterns will be laid out in detail, from descriptions derived from traveler, missionary, and ethnographic literature, in future post(s).



‘Shell-money "Bakhia", Solomon Islands, used as "blood money"’ [Link]

Customary prices

Prior to the rise of efficient competitive markets, prices for goods were often specified by custom or law rather than negotiated. This served to conserve transaction costs in a high transaction cost culture where exchange relationships resembled bilateral monopolies more closely than they resembled spot markets. Bargaining costs were high, and indeed bargaining failure often resulted in violence and destruction rather than merely in no deal. This made focal points of negotiation, such as customary prices and customary compensation amounts for specific injuries, a quite valuable and ubiquitous part of most Neolithic and earlier cultures. When specified by law, these rules setting prices were often intermingled with laws specifying legal penalties and used the same set of units: in the Mesopotamian and Anatolian law codes prior to coinage, most commonly weights of silver and volumes of barley.

Price unit	Frequency
Weight of silver	68
Volume of barley	6
Number of sheep	7
Labor or military service appurtenant to land	11
Other	1

Frequency of legally specified prices and rents in the Old Hittite Laws [2]

One can also think blood-money-type fixed damages (compensation) and fines as customary prices for injuries. As with customary prices for goods, customary prices for injuries conserved on the transaction costs of bilateral monopoly negotiations, in this case negotiations to settle legal disputes. Today this is solved, to the extent it is, by each side predicting what damages or punishments they expect a court to assess, and negotiating accordingly.

Copper spirals and gold discs, 4th millenium BC, Austria. Spiral armbands were among the earliest items worked from native copper, in what are now Serbia and Hungary, c. 5000-4500 BC. [Link]

Estimating deterrence and fairness: eye-for-eye vs. measured punishments

As kings and chiefs gained power, fines paid to them for criminal acts replaced compensation to victims. In some cases a separate set of laws (for example tort laws) arose alongside the criminal law, or was evolved from the previous compensation culture, maintaining some compensation for victims. Subsequently law usually evolved away from monetary compensation and towards punishments for deterrence. A chief concern of criminal law became estimation of deterrence value. The king had incentives to perform punishments both as a public good and a public show. To allow themselves and their public to assess the deterrence value of punishments, there were two major strategies:

- "Eye for an eye"-type laws, which focus on comparing the punishment to the crime's injury (often similar to the injury to maximize perceived fairness, but sometimes also more severe than the injury for extra deterrence value). In some of the non-silver compensation rules in the Mesopotamian and Hittite law codes described above, barley, slaves, or other goods are substituted for silver because in order to correspond to an injury involving barley, slaves, etc.: like for like.
- Measured punishments, which, like monetary compensation for injury, allow the severity of different crimes to be compared and ranked, for example
    - Whipping (number of lashes)
    - Prison sentences (length of time), our dominant modern form of criminal punishment

As suggested above (and for reasons to be explicated in future posts), compensation according to a standard amount of a standard wealth good (pre-coinage money), the outcome of coercive negotiations between clans, was very likely the dominant form of measured punishment during the vast majority of the time and in the vast majority of cultures from the dawn of our species to today.

In Northern Europe, blood money and other compensation for injury was known as "wergeld". If the guilty party didn't have the money on hand, they needed a money-lender.

Markets and the rise of variable damages

There was very little change between the Old Hittite Laws of (c. 1600 BC) and the New Hittite Laws (c. 1200 BC). But between then and the Roman Twelve Tables (c. 400BC) there was a radical shift away from fixed fees and towards variable damages, assessed by judge or jury. This evolution was coincident with the rise of coinage, probably due to the shift of trade in a wide variety of goods away from bilateral and hierarchical relationships and towards competitive marketplaces. Market deals were facilitated by being able to transfer metal in branded form (coins) instead of the cutting and weighing of coils or hack-silver or the laborious counting of shells (or error-prone approximations by length) which had dominated exchange up to that time. The lowering of negotiation costs by marketplaces, coins, and other developments substantially decreased the use of customary prices in favor of prices negotiated in a market.

To be continued!

Posted by Nick Szabo at 2:54 PM

2 comments:

Mitchell said...

> prices for goods were often specified by custom or law rather than negotiated. This served to conserve transaction costs in a high transaction cost culture where exchange relationships resembled bilateral monopolies more closely than they resembled spot markets.

Counting by population I would argue that this is still the norm by far. Yes, the developed world has made inroads but even then in most industries is still beholden to laws that are essentially ancient compared to the circumstances they are dealing with. This ideal of a living in a free market is almost delusionary in the west, it doesn't exist in most cases and usually boils down to semantics.

And as macabre as it can be, do enjoy the penalty/frequency tables.

12:54 AM

The Lion said...

You mentioned that before competitive/spot markets exchange was characterized by bilateral monopolies. I would be interested to know if there exist in your mind or the historical record certain "key" technological changes or social changes that can be looked at where this dynamic started changing into the open competitive model we moderns are more familiar with? It's very interesting to me to think of how the market came to be, not as something that always existed but something that had to be rationally chosen or permitted incrementally over time.

3:17 PM

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